

DOCKET NO. FST-FA-17-5016797-S : SUPERIOR COURT
JENNIFER DULOS : J.D. OF STAMFORD/NORWALK
VS. : AT STAMFORD
FOTIS DULOS : JUNE 3, 2019

MOTION TO INTERVENE, PENDENTE LITE

Pursuant to General Statutes § 46b-57, the moving party, GLORIA FARBER, hereby seeks to intervene in the above captioned matter for purposes of being awarded custody, at least on a temporary basis, of the minor children.¹ An award of custody to Mrs. Farber is in the minor children's best interests. Additionally, Mrs. Farber seeks to intervene for access/visitation rights with the minor children.² In support of her motion to intervene, Mrs. Farber alleges the following:

¹ The Connecticut Supreme Court has held that in custody proceedings in which a third party seeks to intervene, the third party must plead that: 1) she has a parent-like relationship with the child; 2) parental custody would be detrimental to the child; and 3) custody with the third party would be in the child's best interest. See Fish v. Fish, 285 Conn. 4, 89 (2008).

² The Court has also set forth a two-part test in determining whether to award visitation: 1) whether the intervening party had established a parent-like relationship with the child; and 2) whether the child would suffer real and significant harm if visitation were denied. See Roth v. Weston, 259 Conn. 202, 234-35 (2002).

1. On or about June 20, 2017, the plaintiff, Jennifer Dulos, initiated the above-captioned dissolution of marriage action against the defendant, Fotis Dulos. The parties have five minor children.

2. Mrs. Farber is the plaintiff's mother, and the minor children's maternal grandmother. She also holds a Power of Attorney on behalf of the plaintiff. As the children's maternal grandmother, Mrs. Farber has been actively involved with all five children since each was born.

3. The children have resided primarily with the plaintiff since the initiation of the dissolution action, in New Canaan, Connecticut. The current custodial orders provide that the parties share joint legal custody, with the plaintiff having final decision-making and sole physical custody of the five minor children. Since March 20, 2019, the defendant has been afforded only supervised access with the minor children in accordance with a schedule set forth in the Court's Memorandum of Decision, dated March 20, 2019.

4. The plaintiff has been missing since May 24, 2019, and remains missing as of the date hereof. The five minor children have resided with Mrs. Farber, at her residence in New York City, since May 24, 2019. The children's full-time caregiver for the past five years, , has remained with the children at Mrs. Farber's residence and she will continue to be their caregiver.

5. On June 1, 2019, the defendant and his girlfriend, Michelle Troconis, were both arrested by the New Canaan police in connection with the plaintiff's disappearance. The defendant has been charged with tampering with or fabricating physical evidence and first degree hindering prosecution. He is currently being held at the Bridgeport Correctional Facility with a bond set at \$500,000.

6. Mrs. Farber has a "close and substantial" parent-like relationship with the minor children, who are currently residing with her. See Fish v. Fish, 285 Conn. 4, 44 (2008); Roth v. Weston, 259 Conn. 202, 226 (2002).

7. The plaintiff and the children planned to be with Mrs. Farber on May 24, 2019, the date of plaintiff's last communication with the children or her family. The children have had regular and consistent contact with Mrs. Farber during the period of their parents' separation, and before. The children have taken vacations with Mrs. Farber, including to Florida a couple of months ago. They have also regularly stayed at Mrs. Farber's NYC residence, where they have their own sleeping arrangements and where they have kept toys, books, games, etc. over the years.

8. The Court has found that primary residence with the defendant would be detrimental to the minor children. See Fish, 285 Conn. at 71-72. Currently, the defendant is unable to care for the minor children and unable to make appropriate decisions about the minor

children. The children have resided exclusively with the plaintiff until her disappearance on May 24, 2019. Since then, they have resided with Mrs. Farber.

9 Pursuant to Court orders of January 18, 2018 and March 1, 2018, the defendant's access to the children was suspended. He had limited supervised access with the children between approximately June, 2018 and for several months thereafter. In suspending the defendant's access on March 1, 2018, the Court (Heller, J.) stated "[t]he court does not find the defendant to be credible. The defendant does not seem to appreciate in any respect the consequences of lying under oath and willfully violating a court order. His facility in testifying falsely to the court suggests that he is equally comfortable in encouraging the children to lie to achieve his desired outcome." The court further found that there was:

[A]n immediate and present risk of psychological harm to the children if they have unrestricted and unsupervised contact with the defendant. . . In view of the close bond among all five children, as described by the guardian ad litem, the court finds it likely that all five of the children have been adversely impacted by the breakdown of their parents' marriage, the defendant's relationship with Ms. Troconis, and the pressure that the defendant has placed on them to lie.

10. On March 20, 2019, the Court (Heller, J.) issued a decision³ affording the defendant with certain ongoing supervised access with the minor children, which he exercised

³ On April 5, 2019, the plaintiff filed a Motion to Reargue the Court's March 20, 2019 decision, which Motion to Reargue remains pending.

between approximately March 20, 2019 and May 24, 2019. The Court's March 20, 2019 orders set forth a variety of restrictions on the defendant's supervised access with the minor children, including but not limited to that he "shall not have private conversations with any of the children during his supervised weekend parenting time. No conversations shall take place in the supervisor's presence in a language which the supervisor does not speak or understand"; "the defendant shall not engage in or permit any disparagement of anyone involved in this dissolution action, including the plaintiff, her counsel, the guardian ad litem, and the other professionals, in the presence of the children"; and "[t]he prior orders of the court regarding recording all telephone conversations between the defendant and the children and providing transcript of such conversations remain in full force and effect . . .".

11. For so long as the defendant is incarcerated, the children should remain in Mrs. Farber's custody. However, even if the defendant is released, on bond or otherwise, it would be detrimental to the children, particularly in the midst of the investigation into the disappearance of their mother, to be forced to leave Mrs. Farber's custody and return to the defendant's custody, with whom they have not resided for more than two (2) years. The defendant has exhibited a history of being unable to appropriately tend to the children's physical, emotional and psychological needs.

12. Additionally, the minor children would suffer "real and significant harm" if they are removed from their grandmother's home, in which they are comfortable and well cared-for, and if they are removed from the care of their longtime caregiver, See Roth, 259 Conn. at 235.

13. Mrs. Farber is an "integral part of the [minor] child[ren]'s regular routine," feelings of safety and the minor children have "close and substantial" emotional ties with Mrs. Farber. See id. at 225-26.

14. An award of custody or visitation to Mrs. Farber is in the minor children's best interests; See Fish, 285 Conn. at 89. The Court has the authority to award custody or visitation rights to Mrs. Farber pursuant to General Statutes § 46b-57 and/or §46b-59.

15. General Statutes § 46b-57 provides:

In any controversy before the Superior Court as to the custody of minor children, and on any complaint under this chapter or section 46b-1 or 51-348a, if there is any minor child of either or both parties, the court, if it has jurisdiction under the provisions of chapter 815p, may allow any interested third party or parties to intervene upon motion. The court may award full or partial custody, care, education and visitation rights of such child to any such third party upon such conditions and limitations as it deems equitable. Before allowing any such intervention, the court may appoint counsel for the child or children pursuant to the provisions of sections 46b-12 and 46b-54. In making any order under this section, the court shall be guided by the best interests of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference.

WHEREFORE, Mrs. Gloria Farber respectfully request the Court to grant her motion to intervene and to award her temporary custody of the minor children and/or visitation with the minor children; and such other and further relief as the court deems fair and proper.

PROPOSED INTERVENOR,
GLORIA FARBER



By: _____

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CERTIFICATION

I certify that a copy of the above will immediately be mailed or delivered electronically on June 3, 2019, to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

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